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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/469,612 06/06/95 HARVEY

J 5634.280

EXAMINER

LM61/0929

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WASHINGTON DC 20004

ART UNIT

NGO, R

PAPER NUMBER

2731
DATE MAILED:

09/29/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/469,612

Applicant(s)
Harvey et al.

Examiner
Ricky Ngo

Group Art Unit
2731



☒ Responsive to communication(s) filed on Jul 2, 1998

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-28 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-28 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

1. This Office Action is responsive to the amendment(s) filed 07/02/98.

DOUBLE PATENTING V.S. PATENTS

2. After reviewing the restriction requirement under 35 USC 121 in US Patent 5,233,654 it is believed that the claims of the instant application are subject to a double patenting analysis against US Patent 5,233,654 and US Patent 5,335,277.

3. In view of further analysis and applicant's arguments, the rejection of the claims in the instant application under double patenting based on the broad analysis of *In re Schneller* as set forth in paragraphs 7-10 of the previous Office Action has been withdrawn.

DOUBLE PATENTING BETWEEN APPLICATIONS

4. Conflicts exist between claims of the following related co-pending applications which includes the present application:

#	Ser. No.	#	Ser. No.	#	Ser. No.
1	397371	2	397582	3	397636
4	435757	5	435758	6	437044

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7	437045	8	437629	9	437635
10	437791	11	437819	12	437864
13	437887	14	437937	15	438011
16	438206	17	438216	18	438659
19	439668	20	439670	21	440657
22	440837	23	441027	24	441033
25	441575	26	441577	27	441701
28	441749	29	441821	30	441880
31	441942	32	441996	33	442165
34	442327	35	442335	36	442369
37	442383	38	442505	39	442507
40	444643	41	444756	42	444757
43	444758	44	444781	45	444786
46	444787	47	444788	48	444887
49	445045	50	445054	51	445290
52	445294	53	445296	54	445328
55	446123	56	446124	57	446429
58	446430	59	446431	60	446432
61	446494	62	446553	63	446579
64	447380	65	447414	66	447415

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67	447416	68	447446	69	447447
70	447448	71	447449	72	447496
73	447502	74	447529	75	447611
76	447621	77	447679	78	447711
79	447712	80	447724	81	447726
82	447826	83	447908	84	447938
85	447974	86	447977	87	448099
88	448116	89	448141	90	448143
91	448175	92	448251	93	448309
94	448326	95	448643	96	448644
97	448662	98	448667	99	448794
100	448810	101	448833	102	448915
103	448916	104	448917	105	448976
106	448977	107	448978	108	448979
109	449097	110	449110	111	449248
112	449263	113	449281	114	449291
115	449302	116	449351	117	449369
118	449411	119	449413	120	449523
121	449530	122	449531	123	449532
124	449652	125	449697	126	449702

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127	449717	128	449718	129	449798
130	449800	131	449829	132	449867
133	449901	134	450680	135	451203
136	451377	137	451496	138	451746
139	452395	140	458566	141	458699
142	458760	143	459216	144	459217
145	459218	146	459506	147	459507
148	459521	149	459522	150	459788
151	460043	152	460081	153	460085
154	460120	155	460187	156	460240
157	460256	158	460274	159	460387
160	460394	161	460401	162	460556
163	460557	164	460591	165	460592
166	460634	167	460642	168	460668
169	460677	170	460711	171	460713
172	460743	173	460765	174	460766
175	460770	176	460793	177	460817
178	466887	179	466888	180	466890
181	466894	182	467045	183	467904
184	468044	185	468323	186	468324

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187	468641	188	468736	189	468994
190	469056	191	469059	192	469078
193	469103	194	469106	195	469107
196	469108	197	469109	198	469355
199	469496	200	469517	201	469612
202	469623	203	469624	204	469626
205	470051	206	470052	207	470053
208	470054	209	470236	210	470447
211	470448	212	470476	213	470570
214	470571	215	471024	216	471191
217	471238	218	471239	219	471240
220	472066	221	472399	222	472462
223	472980	224	473213	225	473224
226	473484	227	473927	228	473996
229	473997	230	473998	231	473999
232	474119	233	474139	234	474145
235	474146	236	474147	237	474496
238	474674	239	474963	240	474964
241	475341	242	475342	243	477547
244	477564	245	477570	246	477660

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247	477711	248	477712	249	477805
250	477955	251	478044	252	478107
253	478544	254	478633	255	478767
256	478794	257	478858	258	478864
259	478908	260	479042	261	479215
262	479216	263	479217	264	479374
265	479375	266	479414	267	479523
268	479524	269	479667	270	480059
271	480060	272	480383	273	480392
274	480740	275	481074	276	482573
277	482574	278	482857	279	483054
280	483169	281	483174	282	483269
283	483980	284	484275	285	484276
286	484858	287	484865	288	485282
289	485283	290	485507	291	485775
292	486258	293	486259	294	486265
295	486266	296	486297	297	487155
298	487397	299	487408	300	487410
301	487411	302	487428	303	487506
304	487516	305	487526	306	487536

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307	487546	308	487556	309	487565
310	487649	311	487851	312	487895
313	487980	314	487981	315	487982
316	487984	317	488032	318	488058
319	488378	320	488383	321	488436
322	488438	323	488439	324	488619
325	488620	326	498002	327	511491
328	485773	329	113329		

5. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. The attached Appendix provides clear evidence that such conflicting claims exist between the 329 related co-pending applications identified above. However, an analysis of all claims in the 329 related co-pending applications would be an extreme burden on the Office requiring millions of claim comparisons.

In order to resolve the conflict between applications, applicant is required to either:

- (1) file terminal disclaimers in each of the related 329 applications terminally disclaiming each of the other 329 applications, or;

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- (2) provide an affidavit attesting to the fact that all claims in the 329 applications have been reviewed by applicant and that no conflicting claims exists between the applications. Applicant should provide all relevant factual information including the specific steps taken to insure that no conflicting claims exist between the applications, or;
- (3) resolve all conflicts between claims in the above identified 329 applications by identifying how all the claims in the instant application are distinct and separate inventions from all the claims in the above identified 329 applications (note: the five examples in the attached Appendix are merely illustrative of the overall problem. Only correcting the five identified conflicts would not satisfy the requirement).

Failure to comply with the above requirement will result in abandonment of the application.

Claim Rejections - 35 USC § 112

6. Claim 1-20, 26 and 28 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

37 C.F.R. 1.75(d)(1) requires that:

“the terms and the phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description”.

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The following limitations were not supported by the specification as originally filed:

- In claim 8, "*controlling a tuner to tune a receiver said one of a television channel and a television program designated by said one of a code and datum; controlling a selective transfer device to input to a control signal detector at least a portion of said one of a television channel and a television program designated by said one of a code and datum; controlling a control signal detector to search for at least one control signal in said one of a television channel and a television program designated as said one of a code and datum; controlling a selective transfer to input to a computer control signals detected in said one of a television channel and a television program designated by said one of a code and datum; controlling a computer to respond to said detected at least one control signal in said one of a television channel and a television program designated by said one of a code and datum; controlling a television monitor to display one of video and audio contained in said one of a television channel and a television program designated by said one of a code and datum; and controlling a video recorder to one of record and play said one of video and audio contained in said one of a television channel and a television program designated by said one of a code and datum; controlling a selective transfer device to communicate to one of a video recorder and a television monitor [contained in] said one of a television channel and a television program designated by said one of a code and datum.*"

- In claim 9, each of all the different controlling steps could not be found in the specification.

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- In claims 10-11, each of all the inputting steps could not be found in the specification.
- In claim 14, *"receiving at a transmitter station a portion of said downloadable executable code which is effective at a receiver station to perform..."* lines 5-6.
- In claim 14, *"transferring said downloadable executable code from said transmitter station to transmitter; receiving said at least one control signal at said transmitter station, wherein said at least one control signal operates to execute said downloadable executable code; and transferring said at least one control signal from said transmitter station to said transmitter, and transmitting an information transmission comprising said downloadable executable code and said at least one control signal"* lines 11-17.
- In claim 16, *"Wherein a television program is displayed at a receiver station of said plurality of receiver stations and said downloadable executable code programs one of said receiver station processor and a computer to one of output one of video, audio, and text in context of a television program to process a subscriber reaction to said television program, and to select information supplementing said television program."*
- In claim 18, *"receiving said at least one instruct signal to be transmitted by the remote intermediate transmitter station and delivering said at least one instruct signal to said origination transmitter, said at least one instruct signal being effective at said receiver station to perform ..."* lines 15-18.

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- In line 18, *“receiving said at least one control signal which at the remote intermediate transmitter station operates to control communication of said at least one instruct signal; and transmitting said at least one control signal from said origination transmitter before a specific time”* lines 23-26.

- In claim 19, *“embedding a specific one of said at least one control signal in one of said at least one instruct signal and in an information transmission containing said at least one instruct signal before transmitting said at least one instruct signal to said remote intermediate transmitter station”*

- In claim 20, *“wherein said specific time is a schedule time of transmitting one of said at least one signal and information associated with said at least one instruct signal from said remote intermediate transmitter station and said at least one control signal is effective at said remote intermediate transmitter station to control at least one of said plurality of selective transfer devices at different times.”*

- In claim 26, *“transmitting to said at least one receiver station data one of that designate one of a time and a channel of transmission of said instruct signal and that specify one of title of and subject matter contained in one of mass medium programming and said data associated with said instruct signal.”*

- In claim 28, *“causing at least a portion of one of said at least one control signal and said instruct signal to be transmitted in said signal location.”*

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7. Claims 8, 9, 12, 18-20 and 21-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claim 8 recites the limitation "said detected at least one control signal" in line 13. There is insufficient antecedent basis for this limitation in the claim. It also recites the phrase "controlling a selective transfer device to communicate to one of a video recorder and a television monitor said one of a television channel and a television program designated by said one of a code and datum" in lines 20-22, which is unclear and confusing..

- Claim 9 recites the limitations "said control signal detector" in line 8, "said at least one control signal" in lines 10 and 12, and "said computer" in line 12. There are insufficient antecedent basis for this limitation in the claim.

- Claim 12 recites the limitation "said at least one control signal" in line 5. There is insufficient antecedent basis for this limitation in the claim.

- Claim 18 recites the limitation "said remote intermediate transmitted station" in line 3. There is insufficient antecedent basis for this limitation in the claim.

- Claim 21 recites the phrase "transferring said at least one control signal from said one of a broadcast and a cablecast transmitter station to said transmitter, said one of a broadcast and cablecast transmitter station one of broadcasting and cablecasting said instruct signal and said at least one control signal to said plurality of receiver stations" in line 19-22. This phrase is unclear and confusing.

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CLAIM REJECTIONS - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

9. Claims 3-7, 9-14, 17-21 & 23-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Martin et al. (US Patent No. 3,848,193).

- Regarding claims 3 , Martin et al. disclose a system which includes a method comprising the steps of: detecting one of a presence and an absence of a broadcast signal transmitted from a remote station (col. 40 lines 4-12); selecting a cablecast signal for reception based on said of detecting one of said presence and absence of said broadcast signal (col. 40 lines 13-32); and receiving said cablecast signal based on said step of selecting said cablecast signal for reception (col. 40 lines 17 and 24).

- Regarding claim 4, Martin et al. disclose a system which includes a method comprising the steps of: detecting one of a presence and an absence of a cablecast signal transmitted from a

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remote station (col. 40 lines 4-12); selecting a broadcast signal for reception based on said of detecting one of said presence and absence of said cablecast signal (col. 40 lines 13-32); and receiving said broadcast signal based on said step of selecting said broadcast signal for reception (col. 40 lines 17 and 24).

- Regarding claim 5, Martin et al. further teach the steps of controlling a switch to select a cablecast signal (col. 42 lines 11-41); and communicating a signal from said selected cablecast signal input to a receiver (col. 42 lines 21-26).

- Regarding claim 6, Martin et al. further teach the steps of controlling a switch to select a broadcast signal (col. 42 lines 11-41); and communicating a signal from said selected broadcast signal input to a receiver (col. 42 lines 21-26).

- Regarding claim 7, Martin et al. further teach the step of programming a processor to control a switch to select one of a broadcast and a cablecast input (col. 42 lines 21-24).

- Regarding claim 9, Martin et al. further teach the step of controlling a tuner to tune a converter to receiver said at least one specific channel designated by one of code (command code) and datum (teletype message or voice, col. 7 lines 65-67).

- Regarding claim 10, Martin et al. further teach the step of inputting an instruct-to-contact signal (control command signal) to a processor based on said step of receiving said cablecast signal (col. 40 lines 39-61).

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- Regarding claim 11, Martin et al. further teach the step of inputting an instruct-to-contact (control command signal) to a processor based on said step of receiving said broadcast signal (col. 40 lines 39-61).

- Regarding claim 12, Martin et al. further teach the step of inputting at least a portion of one of said broadcast signal and said cablecast signal to a control signal detector to detect at least one control signal (col. 40 lines 13-31); and outputting said at least one control signal to a computer (col. 40 lines 50-61), wherein an instruct-to-react signal (control command signal) is one of communicated to and responded to by said computer (col. 42 lines 21-42).

- Regarding claim 13, Martin et al. further teach the step of communicating to a remote station one of a code and datum designating one of information contained in said received cablecast signal and information to be delivered in said received cablecast signal (col. 42 lines 44-63).

- Regarding claims 14, 18 & 21, Martin et al. disclose a controlling method which includes the steps of: receiving at a transmitter station a portion of a downloadable executable code (command code, col. 7 lines 19-26) which is effect at a receiver station to perform selecting and receiving a cablecast signal based on one of a presence and absence of a broadcast signal (col. 40 lines 4-32); transferring said downloadable executable code from said transmitter station to a transmitter (col. 7 lines 55-57); receiving said at least one control signal (command signal) at said transmitter station, said at least one control signal operates to execute said downloadable executable code (col. 7 lines 60-65); and transferring at least one control signal from said

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transmitter station to said transmitter, and transmitting an information transmission comprising said downloadable executable code and said at least one control signal (col. 7 lines 55-65).

- Regarding claim 17, Martin et al. further teach wherein said at least one control signal incorporates said portion of said downloadable executable code (col. 7 line 57 - col. 8 line 5);

- Regarding claim 19, Martin et al. further teach the step of embedding a specific one of said at least one control signal in one of said at least one instruct signal and in an information transmission containing said at least one instruct signal before transmitting said at least one instruct signal to said remote transmitter station (col. 7 line 57- col. 8 line 5).

- Regarding claim 20, Martin et al. further teach wherein said specific time is a scheduled time of transmitting one of said at least one instruct signal and information associated with said at least one instruct signal from said remote intermediate data transmitter station (col. 8 lines 26-28) and said at least one control signal is effective at said remote intermediate data transmitter station to control at least one of said plurality of selective transfer devices at different times (col. 8 lines 7-13).

- Regarding claim 23, Martin et al. further teach that the receiver receives and responds to an instruct signal (col. 7 lines 60-65).

- Regarding claims 24-25, Martin et al. further teach the step of detecting a signal of said signals which is effective at the transmitter station to instruct communications (col. 7 lines 19-26).

- Regarding claim 26, Martin et al. further teach the step of transmitting to said at least one receiver station said at least one control signal to cause said at least one receiver station to

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tune to one of a broadcast and cable cablecast transmission containing said instruct signal (col. 40 lines 4- 32).

- Regarding claim 27, Martin et al. further teach wherein said at least one control signal further comprises downloadable executable code targeted to said processor of said at least one of said plurality of receiver stations, said downloadable executable code programming one of a way and method in which said processor responds to said instruct signal (col. 40 lines 4-32).

- Regarding claim 28, Martin et al. further teach the step of causing at least a portion of one of said at least one control signal and said instruct signal to be transmitted in said signal location (col. 7 lines 55-65).

CLAIM REJECTIONS - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was

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made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

11. Claim 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. (US Patent No. 3,848,193) in view of Kato et al. (US Patent No. 4,031,548).

- Regarding claims 8 & 16, Martin et al. disclose all the aspects of the claimed invention as discussed above and further disclose a processor (21) for processing a command signal designating a program (col. 7 lines 55-65) which is received from a transmission channel. However, the system of Martin et al. differs from claims 8 & 16 in that the command signal is not a television program and does not include a monitor to display the received television signal. Kato et al., in US Patent No. 4,031,548, disclose a television system which include a selecting and receiving circuitry (block 2 of Fig. 1) for receiving television program (col. 2 lines 41-42) and then displayed on a monitor (VTR 5). Since the system of Martin et al. and the system of Kato et al. both operate in broadcasting mode, therefore it would have been obvious to one having ordinary skill in the art to combine the system of Martin et al. with the receiving circuitry and the monitor taught by Cato et al. in order to allow the system of Martin et al. to receive television signal showing information in image (video) rather than audio.

12. Claims 15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martin et al. (US Patent No. 3,848,193) in view of Campbell et al. (US Patent No. 4,862,268).

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- Regarding claims 15 & 22, Martin et al. disclose all the aspects of the claimed invention as discussed above, but fail to teach that the downloadable executable code is embedded in a television signal. Campbell et al. disclose a system in which data signals including both control and text signals are embedded on the vertical interval of television signals (see abstract). Therefore it would have been obvious to one having ordinary skill in the art to implement the system of Martin et al. with the teaching of embedding the control data in a television signal so that the system can transmit multiple information in one signal.

Response to Arguments

Applicant's arguments filed 7/2/98 have been fully considered but they are not persuasive.

- In order for the examiner to **decide** the question of whether the instant application should be allowed or not, the claimed invention must be clearly presented with its actual patentable subject matter as disclosed by the specification, not with something that merely describes itself. Examiner has applied the prior art of Martin et al. reference (US Patent No. 3,848,193) against the claimed invention because he believes that the reference contains all the features of the claimed invention as identically shown therein, except where limitations are inherent limitations of the prior art or being obvious in view of Kato et al. (US Patent No. 4,031,548) and in view of Campbell et al. reference (US Patent No. 4,862,268). It is the burden on the applicants to rebut an inherent rejection applies to the claims. In re Best, 195 USPQ 430, 433 (CCPA 1977). At this instant time, Examiner regrets that the instant patent application is still

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under prosecution and remains being anticipated by Martin et al. and obvious in view of Kato et al. and in view of Campbell et al.

- In response pages 27-39, that neither Martin et al., Kato et al. or Campbell et al discloses the claimed invention. Further applicants' arguments are in found the remark with respect to the art rejections made by Examiner, but those arguable features are believed to be disclosed by Martin et al., Kato et al. and Campbell et al as described above. Though the wordings of the references may be different from the language of the claimed invention, but their functions are the same as claimed. Therefore, the claimed invention is still being anticipated either by Martin et al. and being obvious in view of Kato et al. and in view of Campbell et al.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

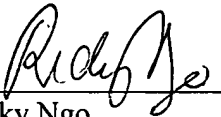
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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ricky Ngo whose telephone number is (703) 305-4798. The examiner can normally be reached on Monday - Friday from 9:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham, can be reached on (703) 305-4378. The fax phone number for this Group is (703) 308-5403.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.


Ricky Ngo
September 27, 1998


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